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ABSTRACT

The Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention was initiated in the Spring of 1975 by the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice. The efforts of this task force resulted in nine reports, each one dealing with one aspect of the Juvenile Justice System. This particular volume considers issues related to the organization of the juvenile or family court such as the court structure, use of non-judicial personnel, and the maintaining of juvenile records. (Author/FC)

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A COMPARATIVE
ANALYSIS OF
STANDARDS AND
STATE PRACTICES

ED154310

COURT STRUCTURE, JUDICIAL AND NON-JUDICIAL PERSONNEL, AND JUVENILE RECORDS

VOLUME III OF IX

National Institute for Juvenile Justice and Delinquency Prevention

Office of Juvenile Justice and Delinquency Prevention

Law Enforcement Assistance Administration

U.S. Department of Justice

CG012586

A COMPARATIVE ANALYSIS OF
STANDARDS AND STATE PRACTICES

COURT STRUCTURE, JUDICIAL AND NON-JUDICIAL PERSONNEL, AND JUVENILE RECORDS

VOLUME III OF IX

Working Papers of the National Task Force
to Develop Standards and Goals for Juvenile
Justice and Delinquency Prevention

Prepared under Grant Number 75-TA-99-0016 from the National Institute for Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Department of Justice.

Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

National Institute for Juvenile Justice and
Delinquency Prevention

Office of Juvenile Justice and
Delinquency Prevention

Law Enforcement Assistance Administration

U.S. Department of Justice

PREFACE TO WORKING PAPERS

Task Force Origin and Mission

The National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention was initiated as part of Phase II of the standards and goals effort undertaken by the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice.

The original portion of this effort (Phase I) led to the establishment of the National Advisory Commission on Criminal Justice Standards and Goals in October of 1971. To support the work of the National Advisory Commission, special purpose Task Forces were created, each concentrating on a separate area of concern in criminal justice. The efforts of the Task Forces resulted in the completion of five reports: Courts; Police; Corrections; Criminal Justice System; and Community Crime Prevention. In addition, the National Advisory Commission itself produced an overview volume entitled A National Strategy to Reduce Crime. Following the completion of these works in 1973, the National Advisory Commission was disbanded.

In the Spring of 1975, LEAA established five more Task Forces coordinated by a newly created National Advisory Committee to carry out the work of Phase II. The five Task Forces were Private Security; Organized Crime; Civil Disorders and Terrorism; Research and Development; and, of course, the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention.

From the beginning there was a recognition that the work of the Juvenile Justice and Delinquency Prevention Task Force was much broader than the other four groups. The charge of the Juvenile Justice Task Force was to supplement virtually all of the work of the Phase I National Advisory Commission with a "juvenile" version of the original adult-oriented standards and goals statements.

In all, the Task Force met ten times, for two or three days each time, in public meetings in various parts of the nation. At these meetings the Task Force was able to solidify its group philosophy, analyze the issues of importance in juvenile justice and delinquency prevention, direct the writing of standards and commentaries, review and modify draft material, and react to National Advisory Committee recommendations. The final results of the Task Force's efforts are set forth in the forthcoming volume on Juvenile Justice and Delinquency Prevention, soon to be published by LEAA.

Throughout its work process, the Task Force had the benefit of staff assistance. The American Justice Institute (AJI) of Sacramento, California, received a grant from LEAA to support the work of the Task Force.

Task Force Working Procedures and Use of Comparative Analyses

The time and resources provided to accomplish the challenging task of producing the standards volume did not allow the Task Force to conduct new research in juvenile justice and delinquency prevention. However, the Task Force did utilize a methodology which assured the incorporation of the best scholarship and state-of-the-art knowledge currently available.

This methodology involved identifying the major issues or questions which needed to be resolved before the Task Force could promulgate standards. Comparative Analyses were then constructed around each of these issues. Each Comparative Analysis begins with a comparison of the positions taken on the issue by other standard-setting organizations--previous Task Forces, Commissions, etc. The Comparative Analyses also consider the current practice of each state with regard to the issue in question.

These background materials were designed not only to make Task Force members aware of the various positions that had been taken with regard to a particular issue, but also to provide the Task Force with a complete analysis of the arguments for and against the full range of options presented.

Using the Comparative Analyses as a basis for its discussion and deliberation, the Task Force then directed the staff and consultants to prepare standards and commentaries in line with the positions which it took in each of these areas. This process proved to be very productive for the Task Force members. It allowed informed consideration of the pertinent issues prior to the adoption of any particular standard.

Compilation of Working Papers

Following completion of the Task Force's work, it was clear to members of the AJI staff and officials at LEAA that the Comparative Analyses prepared to assist the Task Force in its preparation of the standards volume could be useful to other groups. In particular, it was recognized that states and localities which plan to formulate standards or guidelines for juvenile justice and delinquency prevention will need to traverse much of the same territory and address many of these same questions. As a result, LEAA's National Institute for Juvenile Justice and Delinquency Prevention provided the AJI staff with a grant to compile the materials in their present form.

The Comparative Analyses have been organized in a series of nine volumes of Working Papers, each devoted to a particular aspect of juvenile justice and delinquency prevention. (A complete table of contents of each of the volumes is set forth in the appendix.) Some subjects have been analyzed in considerable detail; others, because of limited time or consultant resources, have been given abbreviated treatment. Thus, while it is recognized that these Working Papers do not present a comprehensive examination of all of the important issues in juvenile justice--or even of all of the issues considered by the Task Force--they do represent a useful survey of a wide range of subjects, with a wealth of data on many of the particulars. Using these materials as groundwork, other groups with interests in individual facets of the juvenile system may wish to expand the research as they see fit.

Although the Comparative Analyses should not be taken to represent the Task Force's views--they were prepared by project consultants or research staff and were not formally approved by the Task Force or reviewed by the National Advisory Committee--it was decided that it would be helpful to outline the position taken by the Task Force on each of the issues. Therefore, the AJI staff reviewed each of the Comparative Analyses and added a concluding section on "Task Force Standards and Rationale" which did not appear in the materials when they were considered by the Task Force.

A more thorough exposition of the Task Force's views can be found in the forthcoming volume on Juvenile Justice and Delinquency Prevention, which should, of course, be consulted by those considering these Working Papers.

The efforts of the many consultants and research assistants who prepared the drafts of these materials is gratefully acknowledged. Any errors or omissions are the responsibility of the American Justice Institute, which reviewed the materials and assembled them in their present form.

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FOREWORD

Over the past ten years, a number of national efforts have developed regarding juvenile justice and delinquency prevention standards and model legislation. After the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415) and in conjunction with LEAA's Standards and Goals Program, many States started formulating their own standards or revising their juvenile codes.

The review of existing recommendations and practices is an important element of standards and legislative development. The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) has supported the compilation of the comparative analyses prepared as working papers for the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention in order to facilitate this review. Over one hundred issues, questions, and theories pertaining to the organization, operation, and underlying assumptions of juvenile justice and delinquency prevention are covered in the analyses. These are divided into nine volumes: Preventing Delinquency; Police-Juvenile Operations; Court Structure; Judicial and Non-Judicial Personnel and Juvenile Records; Jurisdiction-Delinquency; Jurisdiction-Status Offenses; Abuse and Neglect; Pre-Adjudication and Adjudication Processes; Prosecution and Defense; and Juvenile Dispositions and Corrections.

The materials discussed in these reports reflect a variety of views on and approaches to major questions in the juvenile justice field. It should be clearly recognized in reviewing these volumes that the conclusions contained in the comparative analyses are those of the Task Force and/or its consultants and staff. The conclusions are not necessarily those of the Department of Justice, LEAA, or NIJJDP. Neither are the conclusions necessarily consistent with the recommendations of the Advisory Committee on Standrds that was established by the Act, although the Committee carefully considered the comparative analyses and endorsed many of the positions adopted by the Task Force.

Juvenile justice policies and practices have experienced significant changes since the creation of the first juvenile court in 1899. The perspective provided by these working papers can contribute significantly to current efforts to strengthen and improve juvenile justice throughout the United States.

James C. Howell
Director
National Institute for Juvenile Justice
and Delinquency Prevention
January, 1977

INTRODUCTION

Volume III: Court Structure, Judicial and Non-Judicial Personnel, and Juvenile Records

The materials in this volume consider a number of important issues related to the organization and administration of the juvenile or family court. The first portion of the volume contains four Comparative Analyses regarding court structure.

In general, the courts handling juvenile matters have, of course, been part of a separate organizational structure since the early 1900's. In recent years, however, a number of groups have advocated the adoption of a family court as a division of the highest court of general trial jurisdiction. And some states have experimented with different organizational structures. The various alternatives for court organization and the merits of each are outlined in the Comparative Analyses on level, positioning, juvenile versus family court and scope of jurisdiction.

The other major segment of this volume addresses issues related to judicial officers and non-judicial personnel. This section contains five Comparative Analyses, which, for the most part, assume that the court handling juvenile matters will be organized as a division of the general trial court. The first of these papers considers what qualifications family court judges should possess. The second addresses the issue of whether assignments to the family court bench should be permanent.

The third Comparative Analysis explores the question of whether judicial officers other than judges should be authorized to hear family court cases. Next, the issue of whether the family court should have its own separate administrative and support staff is examined. Finally, the various methods of selecting judges for the family court bench are outlined, and the pros and cons of each method are discussed.

A short memorandum on juvenile records and information systems is attached as an appendix to the volume. While it is certainly not intended to serve as a comprehensive review of the important issues on juvenile records, the paper does highlight a number of the major issues which should be addressed by any group considering this subject.

Acknowledgements are gratefully made to Garry Kemp, formerly with the AJI staff, who drafted the materials on court structure; to Mr. Jon Pevna, Esq. of San Francisco, who prepared the papers on judicial and non-judicial personnel; and, to Professor Michael Altman of the Arizona State University College of Law, who authored

the memorandum on juvenile records. All of these materials were, however, subsequently revised by the American Justice Institute, which bears responsibility for any errors or omissions.

1. Issue Title: Level--At what jurisdictional level should the court handling juvenile matters be located?

2. Description of the Issue:

The court handling juvenile matters may be located at the level of highest trial court jurisdiction, at an inferior level, or there may be some combination of these two alternatives. Each state must review current practice and make a decision on this organizational issue.

3. Summary of State Practices:

A significant number of states (N=25) locate the court handling juvenile matters at the level of highest general trial jurisdiction. In the other twenty-six states, at least some of the courts handling juvenile matters are located at an inferior level; inferior courts handle juvenile matters in fourteen states, and twelve states have both. In the latter instance, some courts are structured at an inferior level and others are structured as a division of the highest court of general trial jurisdiction. The jurisdictional level in these states typically depends on population, i.e., rural areas have inferior courts and urban areas have a higher court. The practice of all states with regard to the level of the court handling juvenile matters is outlined below:

Practice[1]	# of States	Names of States
Court Located at Highest Level of Jurisdiction	25	AK, AZ, CA, DC, FL, IL, IA, MT, NV, NM, NC, ND, OH, OK, PA, RI, SD, UT, VT, WA, WY, HI, MO, CO, NJ
Court Structured at an Inferior Level	13	AL, GA, IN, LA, MN, MS NB, OR, SC, TN, TX, WV, WI
Combination of Both	13	CT, DE, ID, KY, MD, ME. MI. NY VA, AR, KS, MA, NH

4. Summary of Positions Recommended by Standards Groups:

All of the model acts reviewed[2] are in agreement. They recommend that the court handling juvenile matters be located at the level of highest general trial jurisdiction.

5. Analysis of the Issue:

There is unanimous agreement among standards groups that the court handling juvenile matters should be located at the level of highest general trial jurisdiction. This recommendation is at odds with the practices of a significant number of states. In 14 states, all courts handling juvenile matters are structured at an inferior level, and at least some of the courts handling juvenile matters are so structured in 12 additional states.[3]

Compliance with the recommendations of the standards groups would require these 26 states to change their current practices. The rationale for maintaining inferior courts has not been specified in any of the state statutes including such provisions. Observation suggests population may be a factor in some cases. For example, rural areas may not have a sufficient volume of juvenile matters to justify a full-time judge, let alone a general trial court. It should be noted, however, that a number of rural states (e.g., Alaska and Nevada) maintain juvenile courts at the highest level of trial court jurisdiction, and several states with large urban areas (e.g., Texas and Minnesota) maintain only inferior juvenile courts.

Standards groups have typically identified the quality of justice as the major issue in their recommendations regarding jurisdictional level. For example, the Institute for Judicial Administration/American Bar Association Juvenile Justice Standards Project has indicated four reasons to locate the court handling juvenile matters at the highest level of general trial jurisdiction; all of these reasons are related to the quality of justice available to juveniles. These are (1) judicial salaries would be more likely to be competitive with those of the higher trial courts, (2) inferior courts that previously were relegated to poor physical facilities, as in Rhode Island,[4] hopefully would benefit by better courtrooms, (3) it would provide the courts for handling juvenile cases with the same prestige that is accorded the highest level of trial courts, and (4) there would be a marked improvement in the ability of the court to attract competent jurists.[5]

It has also been suggested that structuring courts handling juvenile matters at an inferior level has a direct effect on the credibility of the court as a court of original jurisdiction.[6] The decisions of inferior courts which handle juvenile matters are subject to review by the appellate division of the higher level trial court. A "de novo" hearing, of course, means that the trial is held from start to finish a second time, which can, in effect, override the proceedings of the inferior court.

6. Task Force Standards and Rationale:

The Task Force addressed the issues of both the level and the

position of the court handling juvenile matters in Standard 8.1.

> The court having jurisdiction over juvenile matters should be at the level of the highest court of general trial jurisdiction and should be a division of that court. This court should also have authority to assume jurisdiction over all family-related legal matters (see Standard 8.2--Family Court Structure).

In the commentary to this Standard the Task Force highlighted some of the factors which it felt warranted locating the court at the highest level of general trial jurisdiction.

> Salaries, physical facilities and the prestige of the court can all be affected negatively by locating it at a lower level. These factors often limit the ability of the court to attract competent jurists. It is also true that structuring the family court at a lower level has a direct effect on the credibility of the court as a court of original jurisdiction... (Appeals to the general trial court are) inefficient and may tend to dilute both the individualized approach to the problems of juveniles and the rehabilitative ideal for which the court handling juvenile matters was specifically created.

Footnotes:

[1]Dineen, Juvenile Court Organization and Status Offenders: A Statutory Profile - National Center for Juvenile Justice (1974).

[2]NCCD Standard Act (1959), Uniform Juvenile Court Act (1968), NAC (1973), HEW Model Act (1974), and Recommended IJA/ABA (1975).

[3]Dineen, Juvenile Court Organization and Status Offenders: A Statutory Profile - National Center for Juvenile Justice (1974) at Pg. 4.

[4]Dyson & Dyson, "Family Courts in the United States" - Journal of Family Law 8:505 (1968).

[5]Rubin, Ted, Tentative Standards Draft, Court Organization and Administration - Institute for Judicial Administration/ American Bar Association (1975).

[6]Weinshienk, Zita L. - National Conference on the Judiciary (March, 1971), West Pub. Co., "Limited and Special Jurisdiction".

1. Issue Title: Positioning--Should the court handling juvenile matters be a separate court or should it be a division of a general trial court?

2. Description of the Issue:

There are two basic options for positioning the juvenile court: (1) the juvenile court can be a separate court, or (2) it can be positioned as a division of other general trial courts. The positioning of the juvenile court is an important issue to be resolved as it provides the framework for the administrative structure for court services and allocation of resources.

A separate court handling juvenile matters, with its own rules and administration, emphasizes the unique nature and importance of juvenile matters; but from the perspective of the total court system within a state, a separate juvenile court may be less efficient and more difficult to manage than a court which is operated as a division of a general trial court.

3. Summary of State Practices:

Twenty-five states locate the juvenile court at the level of the highest court of general trial jurisdiction. Of these, the great majority (N=19) operate the court handling juvenile matters as a division of a general trial court. As indicated below, only six of these states have a separate court handling juvenile matters:

Division or Separate Court[1]	# of States	States by Name
Division of a General Trial Court		
Total	19	
Family Court	2	HI, DC
Juvenile Court	17	AK, AZ, CA, CO, FL, IL, IA, LA, MO, MT, NV, NM, NC, ND, OK, SD, VT, WA
Separate Courts		
Total	6	
Family Court	1	RI
Juvenile Court	5	OH, PA, UT, WY, NJ

All other states (N=26) have inferior level juvenile courts, which by definition, operate as a division of a court of general trial jurisdiction.

4. Summary of Positions Recommended by Standards Groups:

Standards groups have taken a uniform position that juvenile matters should be handled through a division of general trial court jurisdiction. It is believed that this will provide uniformity to court orders and result in the development of a juvenile or family court that will operate more smoothly than would a series of separate courts. Three of the five standards groups also recommend that juvenile matters should be handled within a family court at that level. The positions taken by standards groups are summarized below:

NCCD Standard Act (1959)	Recommends the juvenile court as a division of the highest court of general trial jurisdiction.
Uniform Juvenile Court Act (1968)	Recommends that juvenile court "when possible" should be a division of a trial court of general jurisdiction.
NAC (1973)	Recommends placing juvenile court within a family court structure as a division of a "trial court of general trial jurisdiction".
HEW Model Act (1974)	Recommends establishment of a family court that is a division of the highest court of general trial jurisdiction.
Recommended IJA/ABA (1975)	Recommends formation of a family court as a division of the highest court of general trial jurisdiction.

The National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts (1973) has suggested that juvenile courts should be a division of a court of general trial jurisdiction in order "to consolidate resources for dealing with family problems and to provide a central organization for the administration of these resources..."[2] Similarly, the Institute for Judicial Administration/ American Bar Association Juvenile Justice Standards Project (1975) has stated that "equal status does not come when there is a separate statewide juvenile court operating under its own statewide rules and administration".[3] This statement is based on the assumption that the maintainance of separate courts makes the court structure less efficient and more difficult to manage.

5. Analysis of the Issue:

If it is determined that the court handling juvenile matters be located at the same level as the court of highest general trial jurisdiction, the question arises regarding whether the juvenile court

should be established as a separate court, or operated as a division of a court of general trial jurisdiction. It could be argued that a separate juvenile court emphasizes the importance of juvenile matters, and that it agrees with the philosophical arguments in support of separate handling of children and adults on which juvenile courts are based. However, only six states have separate juvenile courts, and all model acts recommend against it.

The statutes in the six states having a separate juvenile court do not include commentary or statements of rationale in support of the policy. Standards groups and the literature are also silent regarding the rationale for advocating separate courts. For the six jurisdictions listed above that have done this, there is not an underlying principle that has been published or advocated.

Each of the states will need to consider the alternatives and make a decision on the basis of the organizational structure that best meets their individual needs. The essential criterion in deciding the issue of dependent or independent juvenile court status is the organizational structure which best allocates the resources in a state to the needs of juveniles coming before the courts.

6. Task Force Standards and Rationale:

As noted in the preceding comparative analysis, the Task Force's Standard 8.1 recommends that the court handling juvenile matters be a division of the highest court of general trial jurisdiction. The commentary to that Standard suggests,

> An integrated organizational structure will result in more efficient and effective administration. In addition, coordinated administrative effort will allow the courts of general trial jurisdiction to compete on a unified basis for funding, physical facilities and the services of jurists.

Footnotes:

[1]Dineen, Juvenile Court Organization and Status Offenders: A Statutory Profile - National Center for Juvenile Justice (1974).

[2]National Advisory Commission on Criminal Justice Standards and Goals - Task Force on Courts (1973) Standard 14.1.

[3]Rubin, Ted, Tentative Standard Draft - Court Organization and Administration - Institute for Judicial Administration/American Bar Association (1975).

1. Issue Title: Juvenile or Family Court--Should the court for handling juvenile matters be a juvenile court or a family court?

2. Description of the Issue:

Each state must decide if it is to organize in terms of a juvenile court, or on the basis of the enlarged concerns of a family court. The structure of the court will reflect the functions society expects the court system to perform.

3. Summary of State Practices:

Five states include juvenile matters in a more general family court system;[1] i.e., Delaware, District of Columbia, Hawaii, New York and Rhode Island. All other states still maintain juvenile court systems. The creation of family courts in the United States began in Rhode Island (1961), New York (1962), and Hawaii (1965). Since that time, Delaware and the District of Columbia have also adopted family court structures. Of the five states that have adopted the family court structure, four jurisdictions have incorporated all family-related legal problems under their jurisdiction, with only New York being different by excluding divorce proceedings. All other jurisdictions (46) still maintain juvenile court systems.

4. Summary of Positions Recommended by Standards Groups:

The President's Commission on Law Enforcement and Administration of Justice,[2] while recognizing the many shortcomings of the traditional juvenile court, concentrated its recommendations on the improvement of the existing structure in order that it could better function.

The NCCD Standard Act (1959)[3] recommends the establishment of a separate juvenile court; whereas the Uniform Juvenile Court Act (1968) recognized the utility of both approaches and suggested that standards proposed in the model act could be incorporated in either structure.

More recently, the National Advisory Commission on Criminal Justice Standards and Goals (NAC), Task Force on Courts (1973), HEW Model Acts (1974), and the Institute of Judicial Administration/ American Bar Association (IJA/ABA) Juvenile Justice Standards Project (1975) have urged the states to reorganize their court systems to replace the juvenile court with a family court structure having jurisdiction over all family-related legal problems. In this way,

it is felt that the juvenile court ethic can be perpetuated and yet strengthened through reorganization.

NCCD Standard Act (1959)	Recommends establishment of a juvenile court.
Uniform Juvenile Court Act (1968)	Recommends existence of both family courts and juvenile courts. Act states that its rules relate and can be integrated into either structure.
NAC (1973)	Recommends placing juvenile court within family court structure to consolidate resources in dealing with family problems.
HEW Model Act (1974)	Recommends establishment of a family court.
Recommended IJA/ABA (1975)	Recommends formation of a family court that incorporates the strengths of the juvenile court into an integrated court structure.

The impetus for these more recent recommendations is based on broadening the jurisdiction of one court to include all family-related legal problems. This reorganization would eliminate the specialized court system which currently exists (e.g., juvenile courts, domestic relations courts) and would provide for an integrated family court that would minimize duplication of effort in handling family problems. Thus, the separate handling of juvenile delinquents, child custody cases, divorces, adoptions, and so forth would be unified through the consolidation of these specialized courts into a specialized division--the family court.

5. Analysis of the Issue:

Court organization will give expression to the philosophy being expressed within each state. Each structure gives expression to slightly different functions to be performed. Juvenile courts are organized to focus primarily on juvenile behavior; family courts view juvenile behavior as part of a much broader framework and focus on the family as a whole. Whether a state will organize in terms of a juvenile court structure or a family court structure is, therefore, closely tied to beliefs about the scope of the court's jurisdiction and related issues.

The essential philosophical bases for the juvenile court has undergone very little change since the concept was first conceived and implemented through the Juvenile Court Act of 1899 (Illinois).[4] Both a juvenile court structure and a family court structure provide the juvenile with a forum, separate from the adult court system, that

can promote individualized justice, and establish a rehabilitative ideal.

Advocates for a juvenile court structure recognize the advances that the juvenile court has made procedurally in recent years[5] and advocate continuing the juvenile court apart from the added burden of other family-related problems. The focus of juvenile court proponents is on the juvenile.

Advocates for the family court structure[6] argue that the juvenile court ethic can be preserved in a family court, and it would have the added advantage of addressing other family problems that are often related to delinquency. According to this thinking, all legal actions relating to the child or the family, such as divorce, child custody, or allegations of delinquency have common threads which can be tied together by a court with broad jurisdictional powers. Thus, rehabilitation of the juvenile is seen as a part of a much larger effort of strengthening the family environment. It is further argued that reorganization to eliminate the specialized court system which now exists (e.g., juvenile courts, domestic relations courts) would minimize duplication of effort in handling family problems.

6. Task Force Standards and Rationale:

The Task Force stronly endorsed the concept of a single family court to handle all family-related legal matters. It addressed both the issue of a juvenile versus a family court and the issue of the appropriate scope of the court's jurisdiction in Standard 8.2. The text of that standard and relevant excerpts from the commentary outlining the Task Force's rationale for its decisions appear in the next comparative analysis.

Footnotes:

[1]See Dineen, Juvenile Court Organization and Status Offenders: A Statutory Profile, National Center for Juvenile Justice (1974).

[2]See President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967), particularly Vinter ("The Juvenile Court as an Institution") and Lemert, "The Juvenile Court - Ouests and Realities."

[3]See Standard Juvenile Court Act - National Council on Crime and Delinquency (1959).

[4]See S. Fox, "Juvenile Justice Reform: A Historical Perspective," Stanford L. Rev. 22:1137 (1970); or L. Schultz, "The Cycle of Juvenile Court History," Crime & Delinquency 19:457 (1973).

[5]See O. Ketcham, "Legal Renaissance in the Juvenile Court," Northwestern L. Rev. 60:585 (1966).
See Paulsen, "Juvenile Courts, Family Courts, and the Poor Man," California L. Rev. 54:964.

[6]See Dinkenspiel & Gough, "The Case for a Family Court - A Summary of the Report of the California Governor's Commission in the Family," Family Law Quarterly I:70 (1967).

1. Issue Title: Scope--What should be the scope of the court's jurisdiction?

2. Description of the Issue:

It is essential for each state to review and to precisely define the scope of the court's jurisdiction. It is an expression of the philosophy and purpose of the court.

The scope of the court handling juvenile matters can be defined in terms of three basic options: (1) the court's jurisdiction might be simply limited to delinquent conduct, (2) the court's jurisdiction could include not only delinquency, but what is now commonly referred to as "status offenses", and dependency/neglect, or (3) the scope of the court's jurisdiction might be broadened even further so as to encompass the full range of family-related legal problems.

3. Summary of State Practices:

There are no state statutes that currently limit juvenile court jurisdiction to delinquent acts; the great majority (N=46) include both non-criminal acts by juveniles and dependency/neglect issues. Four states (Delaware, District of Columbia, Hawaii and Rhode Island) have reorganized the juvenile court and made it a part of an integrated family court, with jurisdictional authority over all family-related legal problems. One additional state, New York, has a non-integrated family court structure with jurisdiction over all family-related legal problems with the exception of divorce.

Court Structure	Jurisdictional Powers	# of States	States by Name
Integrated Family Court	All family-related legal problems	4	RI, DE, HI, DC
Non-Integrated Family Court	All family-related legal problems (except divorce)	1	NY
Juvenile Court	Delinquent acts, non-criminal acts, dependent/neglected	46	All Others
Juvenile Court	Just delinquent acts	0	--

4. Summary of Recommendations by Standards Groups:

No specific standards group has recommended that the scope of jurisdiction of the court handling juvenile matters be limited

exlusively to delinquent conduct. However, the National Council on Crime and Delinquency, in their publication Crime and Delinquency, has taken the position that "status offenders" should be excluded from the jurisdiction of the juvenile court.[1] Other writers have suggested that the court's jurisdiction over neglected/dependent children also be more limited. The rationale behind these positions are: (1) the juvenile court is already overburdened and should focus its coercive powers on the more threatening criminal behavior, (2) the court is an inappropriate resource for the handling of "status offenses" since the behavior is often vaguely defined and, in any event, is not a crime if committed by an adult, and (3) it is not adequately equipped to intervene effectively; i.e., intervention should only occur if some promise of accomplishment of purpose accompanies it.

The NCCD Standard Act (1959) and the Uniform Juvenile Court Act (1968) support a limited juvenile court jurisdiction which includes delinquency and certain non-criminal issues; e.g., adoption and child custody. More recent model acts suggest an expanded jurisdictional authority to include family-related legal problems; e.g., divorce, intra-family assault, and paternity actions.

The most recent standards recommended by the Institute for Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards Project include the full array of family-related problems, although it is recommended that jurisdiction not be extended to status offenses and "victimless crimes". A more detailed description of the position of various model acts with respect to jurisdictional authority is presented below:

NCCD Standard Act (1959)	Recommends jurisdiction over delinquent/non-criminal behavior, dependent/neglected children, child custody, adoption, civil commitments of a mentally defective or mentally ill minor, and proceedings under the Interstate Compact on Juveniles.
Uniform Juvenile Court Act (1968)	Recommends jurisdiction over delinquents, non-criminal acts, dependent/neglected children, adoption, judicial consent to marry, proceedings under the Interstate Compact on Juveniles, and child custody.
NAC (1973)	Recommends jurisdiction to include: delinquency, neglect, support, adoption, child custody, paternity action, divorce and annulment, and assault offenses in which both the victim and alleged offender are members of the same family. Jurisdiction over dependent children is excluded and no position is taken on "conduct-illegal-for-children-only" offenses.

HEW Model Act (1974)	Recommends jurisdiction over delinquent, neglected children, adoption, proceedings under the Interstate Compact on Juveniles, child custody, and civil commitments of a mentally retarded or mentally ill child. No recommendation made regarding jurisdiction over status offenses.
Recommended IJA/ABA (1975)	Recommends jurisdiction over juvenile law violations, neglected and abused children, children in need of emergency medical treatment, termination of parental rights, appointment of guardian, mental illness or retardation commitment, proceedings under the Interstate Compact on Juveniles, offenses against children, intra-family criminal offenses, divorce, separation, annulment, alimony, custody and support of children, establish and enforce paternity support, and proceedings under the Uniform Reciprocal Enforcement Act. Recommends against jurisdiction over status offenses and certain "victimless crimes".

5. Analysis of the Issue:

There are three basic philosophical positions a state may consider in deciding the issue of the scope of jurisdictional authority to be provided the court which is to handle juvenile matters.

The first position calls for curtailing the scope of jurisdiction of the court by eliminating certain matters from its jurisdiction. For example, proponents of this position might wish to limit the scope of the court's jurisdiction to behaviors that are considered crimes when committed by adults; that is, court jurisdiction would be limited to delinquent conduct.

The IJA/ABA Juvenile Justice Standards Project and the HEW Model Act of 1974 recommend against including status offenses under the jurisdiction of either a juvenile or family court. This same position has been taken by the National Council on Crime and Delinquency in their publication Crime and Delinquency.[2] Other writers have made similar proposals by suggesting that the court's jurisdiction should be limited in its intervention practices with regard to dependent/neglected children. The rationale behind such positions seems to be that the juvenile court is not adequately able to handle the non-criminal behavior of juveniles and that it should focus its coercive powers on the more threatening criminal behavior.

The IJA/ABA Juvenile Justice Standards Project goes further by suggesting that certain "victimless crimes" not be included under juvenile court jurisdiction. This suggestion apparently originates from a belief that "victimless" crimes are philosophically suspect and should not be the concern of the courts.[3]

The second position is built on the belief that the juvenile court should have jurisdiction over all matters which relate directly to juveniles, and that the rehabilitation of children is the primary focus of the court. Persons advocating this position generally include, within the scope of the court's jurisdiction, delinquent conduct as well as status offenses, dependency/neglect, and certain other categories of behavior related to children.

Standards documents such as the Uniform Juvenile Court Act (1968)[4] have recommended that the juvenile court have jurisdiction over delinquent acts and other legal matters that relate directly to the juvenile (e.g., non-criminal behavior, dependent/neglected children, child custody, adoptions, civil commitment of the minor for mental illness, and others). This position has been advocated as the best approach for achieving the rehabilitative ideal as conceived through the doctrine of parens patriae. It is felt by these groups that the separation of adult criminal and juvenile proceedings avoids the adverse consequences of classifying or labeling the juvenile, and allows the court to give each child individualized treatment.[5]

A third position focuses on the total family, rather than just the child, This position normally results in advocacy for a family court with very broad jurisdictional powers in the attempt to strengthen the family court by handling a wide range of family-related legal problems.

Reorganization proponents like the Institute for Judicial Administration/American Bar Association (IJA/ABA)[5] and the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts (1973) (NAC) advocate that the court authorized to handle juvenile matters should have enlarged jurisdictional powers which include the full range of family-related legal matters. This position is supported by the proposition that all legal actions relating to the child or the family such as divorce, child custody and allegations of delinquency have common threads which can be tied together by a court with broad jurisdictional powers. It is suggested that consolidation of jurisdiction would remove organizational barriers which presently limit the courts opportunity to strengthen the family environment, and to maintain the child in his own family.

State decisions on this issue will be extremely important. The issue is important because jurisdictional power itself is the enabling mechanism of the court system that establishes boundaries and guidelines for the accomplishment of state goals.

At this point in time, no state has chosen to adopt a juvenile court structure with jurisdiction exclusively over delinquent acts. State practice clearly favors the juvenile court structure with jurisdiction over delinquent acts plus other legal matters that relate directly to the child. A minority of the states have adopted a

family court structure with broad jurisdiction over a variety of family-related legal problems.

6. Task Force Standards and Rationale:

The Task Force spoke to the issue of the scope of the court's jurisdiction in Standard 8.2.

> Each state's judicial system should include a family court. Family court jurisdiction should include: juvenile delinquency, domestic legal relations, adoptions, civil commitments, Families with Service Needs, Endangered (Neglected or Abused) Children, concurrent jurisdiction over intra-family crimes, contributing to the delinquency of a juvenile, criminal nonsupport, Interstate Compact on Juveniles and Uniform Reciprocal Enforcement of Support Act.

The Task Force strongly supported the concept of a family court and urged that all states adopt this organizational structure as soon as possible. The commentary to the standard emphasizes that,

> Family-related legal problems have a common root. To treat these problems in separate courts is to encourage inconsistent orders and to upset needlessly the lives of families who appear before the court.

In addition, the commentary states,

> ...Individualized justice for juveniles and the traditional rehabilitative ideal of the juvenile court can, and should be maintained within the framework of a family court. The added advantage of the recommended court structure is the opportunity it provides for increased influence over the total family environment, which is often both a contributing factor underlying delinquency and the key to an effective rehabilitation program.

Footnotes:

[1]See Juvenile Court Organization and Status Offenses: A Statutory Profile by John Dineen, National Center for Juvenile Justice (1974).

[2]"Jurisdiction Over Status Offenses Should be Removed from the Juvenile Court" - Crime and Delinquency, 21-#2 - NCCD Board of Directors (1975).

[3]See IJA/ABA, Juvenile Justice Standards Project, "Information Packet in Juvenile Justice Standards Project" (1975).

[4]See Uniform Juvenile Court Act - National Conference of Commissions on Uniform State Laws (1968).

[5]See Standard Juvenile Court Act - National Council on Crime and Delinquency (1959).

[6]See Rubin, T. Tentative Standards Draft - Court Organization and Administration, Institute for Judicial Administration/ American Bar Association Juvenile Justice Standards Project (1975).

1. Issue Title: Qualifications of Judges--Should Family Court Judges Possess Special Qualifications In Addition To Those Required for General Trial Court Judges?

2. Description of the Issue:

If the position is adopted that the family court should be a division of the highest trial court of general jurisdiction, the issue arises whether the judges of the family court should be required to meet the same qualifications as the judges of the trial court, or should meet some additional criteria. If judges of the family court are to hear cases that represent a unique, special branch of the law, some determination should be made if the uniqueness of these cases is such that the judges hearing them should likewise be specially qualified. This in turn relates to the question of whether the establishment of a special division called the family court is in response solely to the divisions of the codes and statutes, or in response to the special needs of these cases in terms of the justice system personnel who handle them.

3. Summary of Major Positions:

This issue has been addressed by three standards-promulgating organizations in recent years. Two have called for almost identical special qualifications in addition to State Bar membership, the usual trial court judge basic qualification.[1] The other position represents the view that all judges possess law degrees and be members of the Bar without any special qualifications being delineated.

At the state level, a survey of current practices shows few instances of special qualifications for family (juvenile) court judges. Only one state mentions specific additional qualifications. While five states have no minimum qualifications, forty require the same background as for all trial court judges, and five require that the judge by an attorney or have had prior judicial experience; i.e., a "grandfather" clause.[2]

The following tables illustrate these two sources' varying positions:

4. Summary of State Practices:[3]

BASIS FOR QUALIFICATIONS	NUMBER OF STATES	NAMES OF STATES
I. All family (juvenile) court judges must be attorneys.	40 (+ D.C.)	AL, AZ, CO, CN, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, MT, NB, NV, NJ, NM, NY, NC, ND, OR, PA, RI, SC, SD, TX, UT, VT, WA, WI, WY
II. All family court judges must be attorneys or have had prior judicial experience.	5	CA, MN, OH, OK, VA
III. All family court judges must be knowledgeable about family and child problems.	1	DE
IV. No minimum qualifications for family court judges.	5	AK, AR, NH, TN, WV

5. Summary of Positions Recommended by Standards Groups:

NAC (1973)[4]	HEW/NCCD/NCJCJ Standards for[5] Juvenile & Family Crts (1968)	NCJCJ Evaluation Standards[6] (1974)
Recommends that all judges should "possess law degrees and be members of the bar."	Recommends that every family/juvenile court judge be a member of the Bar, interested and fully qualified for the work, able to give his/her time and thought to it, and possess: 1) Deep concern about the rights of people 2) Interest in the problems of children & families 3) Awareness of modern psychiatry, psychology and social work 4) Ability to make dispositions uninfluenced by own personal concepts of child care 5) Skill in administration and ability to delegate 6) Ability to conduct hearings in kindly manner & to talk to children and adults at their level of understanding without loss of essential dignity of court.	Recommends that every juvenile court judge be a member of the State Bar, have the interest, characteristics and qualifications to devote time and effort to juvenile court work, and possess the following personal attributes: 1) Deep concern about the rights of people 2) Interest in the problems of children and families 3) Awareness of modern psychiatry, psychology and social work 4) Ability to make dispositions uninfluenced by own personal concepts of child care 5) Eagerness to learn 6) Skill in administration & ability to delegate 7) Ability to conduct hearings in kindly manner & to talk to children and adults at their level of understanding without loss of essential dignity of court.

Summary of Positions:

I. Member of State Bar - All three groups recommend that family court judges be members of the State Bar.

II. Interest, Qualified and Special Personal Attributes - Two groups recommend that all family court judges be interested in the position, be qualified to do the work, and have deep concern about the rights of people, interest in children/family problems, awareness of social sciences, ability to make objective dispositions, skill in administration and ability to conduct hearings in special manner without detracting from their essential dignity.

III. Eagerness to Learn - One group recommends, in addition to the above, that all family (juvenile) court judges possess the personal attribute of an eagerness to learn.

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6. Analysis of the Issue:

Standard-setting organizations that have considered the question have appeared to adopt a position consistent with the scope of their interest. The National Advisory Commission, which considered courts on a nation-wide basis, opted for all trial court judges being selected under the Merit Plan of judicial selection. The HEW Standards for Juvenile and Family Courts, which was done in conjunction with the National Council on Crime and Delinquency and the National Council of Juvenile Court Judges, and the Juvenile Court Evaluation Report proposed by the National Council on its own, both consider juvenile and family courts by themselves. By excluding general trial courts, the latter groups have perceived a need for special qualifications which should be met to be a judge of a juvenile/family court.

The rationales for these two positions are clear, although opposed to one another. If a family court is a part of a general trial court, its judges should be selected in the same manner as the other judges of the court. This not only guarantees uniformity in the selection process, it also aids in attaining a uniform level of quality of personnel within the trial bench. The strongest argument in favor of this position is that the first prerequisite of judicial selection is to obtain uniformly qualified judges since the selection process cannot really determine beforehand who will or will not be a "good" judge in the final analysis.

On the other hand, the concept of a family court has developed out of the belief that this area of the law has generally been neglected both in the sense of resources and personnel. With this perspective, the position has been taken that every aspect of the family court, including judges, needs specialized backgrounds, training, and capabilities. In fact, the HEW position is that "selection of a competent judge who can give leadership to the court specializing in children's cases is of the greatest importance..."[7]

Although the groups proposing consideration of special qualities do not address whether the meeting of these factors will guarantee "good" judges, they appear to assume that this will be the result. The soundness of this assumption is tempered by the fact that no empirical basis has yet been established to determine what criteria can be applied in the selection process to identify individuals who will become competent and/or outstanding trial judges. Depending upon how one is affected by this lack of empirical data may, in large part, determine the reaction to the call for special qualifications.

The practices of the states do not indicate a great disparity despite the variations in court structure and selection procedures. The vast majority treat juvenile/family court judges as regular trial judges and require them to meet the same qualifications. It is doubtful that this uniformity is due to any great thought having been given to the matter by legislatures. Rather, as most states have some type of state-wide judicial article, it is more likely that the general nature of such articles has triggered a general approach to family court judicial qualifications.

Delaware is the only state to require special qualifications for its family court judges. There is no data available as to whether this approach has had any identifiable, positive effects which would serve to confirm the desirabilities of this approach.

7. Task Force Standards and Rationale:

The Task Force's Standard 8.4 highlights a number of its concerns regarding family court judges.

> Family court judges should be lawyers who possess a keen and demonstrated interest in the needs and problems of children and families. Service in the family court should be a permanent assignment. Family court judges should participate in professional training programs.

The Task Force believed that insuring the provision of competent, qualified jurists for the family court bench was essential to the effective operation of the juvenile justice system. In addition to emphasizing the importance of a thorough knowledge of relevant legal procedures and the contributions of related disciplines, the commentary underscores the importance of familiarity with local minority groups and an awareness of the influence of cultural values on family behavior and child rearing.

The family court judge's important role in assuring leadership in the community for the development of services for children and families is also emphasized and it is noted that candidates for this position should be willing to assume this responsibility.

Footnotes:

[1]U.S. Department of Health, Education and Welfare, Standards for Juvenile and Family Courts, p. 103 (1968) and National Council of Juvenile Court Judges, Juvenile Court Evaluation Report, Chapter 4 (1974).

[2]Mark M. Levin and Rosemarry C. Sarri, Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States, p. 44 (1974).

[3]Ibid.

[4]National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 8.1 (1973).

[5]U.S. Department of Health, Education and Welfare, loc. cit.

[6]National Council of Juvenile Court Judges, loc. cit.

[7]U.S. Department of Health, Education and Welfare, op. cit., p. 103.

1. Issue Title: Assignment of Judges--Should the Assignment of Judges to Serve on the Family Court be permanent?

2. Description of the Issue:

The matters coming before the family court deal with a specialized branch of law. The types of cases dealt with, standards of due process and evidence, and the role of the judge may vary greatly from the general civil and criminal courts. The issue therefore exists as to whether judges of the family court should be assigned to it permanently, for a fixed, but less than permanent term of years, or on a rotational basis. These alternatives are approached under the broad question of which type of assignment policy is best suited to the needs of such a special division of the highest court of general jurisdiction.

3. Summary of Major Positions:

At the level of standards-promulgating organizations, two groups have addressed this issue directly, one peripherally. Each have taken a somewhat different stance.

One standard calls for the avoidance of assignments to the family court of less than one year, especially on the first assignment of a judge.[1] The second echoes this stance except where the family court is part of the highest court of general trial jurisdiction in an "integrated" state court system, wherein rotational assignments are permissable.[2] The third position merely states that all judicial functions should be performed by full-time judges but does not address the question of length of tenure within divisions.[3]

On the state level, there is no uniformity of response to this issue, nor a uniformity of results based on three recent surveys. Although none of the surveys inquire specifically of the length of assignment, they do address the amount of time spent on family matters which gives some indications of various jurisdictions' approach to this issue.

The following tables amplify these various responses:

4. Summary of State Practices:

LENGTH OF ASSIGNMENT			NUMBER OF STATES/PERCENT OF RESPONDENTS			NAMES OF STATES	
Univ.of MI[4] (1974)	US Dept.of Just.[5] (1973)	NCJCJ[6] (1974)	Univ.of MI (1974)	US Dept. of Justice[7] (1973)	NCJCJ (1974)	Univ. of MI (1974)	US Dept. of Justice (1973)
I. All family court judges full-time.	I.Judges of courts of general jurisdiction who spend 90-100% of time on juvenile matters.	I.Full-time.	I. 4+DC	I. 4+DC	I. 12.4%	I.CN,DE,DC,RI, UT	I.CA, DE, DC, MS, RI
II.Full-time where 50,000+ population in county.	II.Judges of courts of general jurisdiction who spend 51+% of time on juvenile matters.	II.Half-time or less.	II. 4	II. 1	II. 80.4%	II.GA,NB,SC,WA	II.CT
III.Full-time where 100,000+ population in county.	III.Judges of courts of limited and special jurisdiction who spend 90-100% of time on juvenile matters.	III.Quarter time or less.	III. 10	III. 21	III. 66.7%	III.AL,HA,IA, LA,MA,MS, NV,NJ,NY, TN	III.AL,AR,CO,CN, FL,GA,IN,KS, LA,MS,MI,NB, NJ,NY,OR,SC, TN,TX,UT,VT, VA,WV
IV.Full-time where 250,000+ population in county.	IV.Judges of courts of limited and special jurisdiction who spend 51+% of time on juvenile matters.	IV.Also hear domestic relations.	IV. 4	IV. 17	IV. 69.8%	IV.IN,KS,MN, OR	IV.AL,FL,GA,KY, LA,MI,MS,NB, NJ,NY,OH,SC, SD,TN,TX,UT, VA,WA,WV
V.Full-time where 500,000+ in county.	V.Judges of any level who spend less than 51% of time on juvenile matters.	V.Also hear general civil and criminal.	V. 5	V. 19	V. 63%	V.CO,MD,OH, PA,WI	V.AK,AR,HA,ID, IL,IO,ME,MD, MN,NV,NH,NM, NC,ND,OK,PA, WI,WY
VI. No full-time requirements.		VI.Also sit on probate court.	VI. 23		VI. 62.7%	VI.AK,AZ,AR, CA,FL,ID,IL, KY,ME,MI,MO, MT,NH,NM,NC, ND,OK,SD,TX, VT,VA,WV,WY	

5. Summary of Positions Recommended by Standards Groups:

NAC (1973)[8]	HEW/NCCD/NCJCJ Standards for Juvenile and Family Courts (1968)[9]	NCJCJ Evaluation Standards (1974)[10]
Recommends that all judicial functions in the trial courts should be performed by full-time judges.	Short-term assignments of less than one year are to be avoided, especially on first assignment. Except that where family court is part of the highest court of general trial jurisdiction in an integrated court system with certain functions centralized at the state level, rotation is acceptable.	Short-term assignments of less than one year are to be avoided, especially on first assignment.

Summary of Positions:

I. Short-term assignments to be avoided - Two groups adopt this position, with one adding the qualification that rotation is acceptable in an integrated court system with certain functions centralized at state level.

II. Full-time judges - One group states only that all judicial functions are to be performed by full-time judges.

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6. Analysis of the Issue:

Closely related to the previous issue of who will make the best family court judge, is the issue of how long judges should be assigned to the family court. Two philosophies generally govern the attitudes adopted in this area. The generalist philosophy propounds that trial judges should be familiar with all aspects of trial court work and should be rotated often. The specialist philosophy adopts the position that judges, like lawyers, may have specific talents in areas of the law and should be able to apply these talents in a giver area and be encouraged to develop them by long-term assignments.

The two standards groups devoted to family courts have both approached this issue with somewhat different results. The question has received little attention elsewhere in a standards-setting context.

The National Council of Juvenile Court Judges has stated that assignments to the family court should never be less than one year, especially on the first assignment. However, no maximum term for such assignments has been proffered by this group. The reasoning used in adopting this position is apparently that rotation would dilute the development of a family court philosophy and terminate the establishment of continuity therein.[11]

HEW is in partial agreement, except where an integrated court structure is in operation. The belief is that where administrative and policy-making functions are centralized at the state level, adverse effects from rotation are not likely to occur.[12]

Data on state assignment practices is practically non-existent. What is available is information on whether family court judges are full-time or part-time. It appears that full-time family court judges are a function of population and hence caseload size rather than of any philosophical approach. The statistical comparisons of time spent on such matters indicates that about one-fifth of all states actually have full-time juvenile/family court judges. In such situations it may be difficult to develop assignment policies if full utilization is the primary concern.

7. Task Force Standards and Rationale:

As noted in the preceding comparative analysis, the Task Force's Standard 8.4 recommends that service in the family court be a permanent assignment. The commentary to that Standard indicates,

> The specialized skills that make a good family court judge cannot be learned in a short period of time. It may take an initial period of time to become completely

familiar with the judicial responsibilities in this specialized area, more time to polish special skills and still more time to begin formulating and implementing needed improvements. It seems imperative, therefore, that the assignment to the family court be an ongoing assignment for the tenure of that judge. However, provisions should, of course, be made to remove judges who are unsuited to preside over the family court. Thus, these judges should be subject to the same standards of discipline and removal as other trial court judges. In addition, family court judges should be permitted to be reassigned to another division of the trial court if they so desire.

Footnotes:

[1]National Council of Juvenile Court Judges, loc. cit.

[2]U.S. Department of Health, Education and Welfare, op. cit., P. 105.

[3]National Advisory Commission on Criminal Justice Standards and Goals, loc. cit.

[4]Mark M. Levin and Rosemary Sarri, op. cit., P. 39

[5]U.S. Department of Justice, National Survey of Court Organization, P. 64 (1973).

[6]Kenneth Cruce Smith, "A Profile of Juvenile Court Judges in the United States," in Juvenile Justice, August, 1974, P. 33.

[7]These responses include time spent on dependency and neglect, adoptions and guardianships, juvenile traffic, and other related matters in addition to time spent on juvenile delinquency.

[8]National Advisory Commission on Criminal Justice Standards and Goals, loc. cit.

[9]U.S. Department of Health, Education and Welfare, loc. cit.

[10]National Council of Juvenile Court Judges, loc. cit.

[11]U. S. Department of Health, Education and Welfare, loc. cit.

[12]Ibid.

1. Issue Title: Other Judicial Officers--Should Judicial Officers Other Than Judges be Authorized to Hear Family Court Cases?

2. Description of the Issue:

If a jurisdiction does not require judges to hear family law cases and/or lacks the resources to obtain the necessary judicial manpower for such cases, the issue must be addressed as to who shall hear these matters. Many jurisdictions allow commissioners and/or referees to pick up these caseloads which has raised the corollary question of their effectiveness since they are not full-fledged judicial officers with the concomitant authority and status.

3. Summary of the Major Positions:

Each of the three standards organizations considering this issue have approached it somewhat differently. One group calls for all judicial functions to be performed by full-time judges.[1] The two others suggest the use of referees (commissioned) assuming two different sets of criteria are met: (1) Referees are members of the State Bar, familiar with the philosophy and practice of the court, can hear cases only when parties are first notified of the right to a hearing before a judge if so desired, and powers are limited to hearing evidence, making findings and recommendations, all of which must be confirmed by the order of a judge;[2] (2) Referees are selected by a judge after having been certified as qualified by a special merit system administrative board.[3]

The states, however, use a much more general set of standards in determining whether referees can be utilized to hear family (juvenile) cases. Based on two recent surveys, presented in the following table, between 28 and 29 states authorize referees in family matters based on the size of the county (8), the determination of the presiding judge of the court (20), or whether the court hearing the cases is of general or limited jurisdiction (29).

4. Summary of State Practices:

When Use of Other Judicial Personnel Permitted		Number of States		Names of States	
Univ. of MI[4] (1974)	US Dept. of Justice[5] (1973)	Univ. of MI (1974)	US Dept.of Justice (1973)	Univ.of MI (1974)	US Dept.of Justice (1973)
I.Wherever presiding judge of county determines use of referees necessary.	I.In trial courts of general jurisdiction.	I. 20	I. 18+DC	I.AL,AZ,AR, CA,CO,DE, GA,HI,ID, IA,LA,MD, MI,NV,NJ, ND,OH,OR, TN,UT	I.AK,AZ,CA, CO,DC,GA, IN,IA,MD, MN,MS,MO, NV,ND,OH, OR,PA,WA, WY
II.When county classified as one of largest metropolitan areas in state.	II.In trial courts of limited and special jurisdiction.	II. 8	II. 23	II.IN,MN,MS, MO,NB,OK, TX,VA	II.AK,AZ,AR,CA, CO,DE,GA, IN,IA,KS, KY,LA,MD, MI,MN,MS, NB,NJ,OH, SD,TN,UT, VA
III.No state statutory provisions for or against usage.	III.No utilization indicated at any level.	III. 22+DC	III. 18	III.AK,CT,DC, FL,IL,KS, KY,ME,MA, MT,NH,NM, NY,NC,PA, RI,SC,SD, VT,WA,WV, WI,WY	III.AL,CT,FL, HI,ID,IL, ME,MA,NH, NM,NY,NC, OK,RI,SC, TX,VT,WV, WI

5. Summary of Positions Recommended by Standards Groups:

NAC[6] (1973)	HEW/NCCD/NCJCJ Standards for Juvenile and Family Courts (1968)[7]	NCJCJ Evaluation Standards (1974)[8]
Recommends that all judicial functions in the trial courts should be performed by full-time judges.	Recommends use of referees only where selected by a judge after being certified as qualified by special merit system administrative board.	Recommends use of referees that are members of State Bar and familiar with philosophy and practice of the court where parties notified of right to hearing before a judge if so desired. Powers limited to hearing evidence, making findings and recommendations, all of which must be confirmed by order of a judge.

Summary of Positions:

I. Only full-time judges to handle judicial functions - One group adopts this position.

II. Referees allowed, where members of State Bar, given limited powers, and parties have right to hearing before judge - One group adopts this position.

III. Referees allowed where selected by judge after certification process - One group adopts this position.

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6. Analysis of the Issue:

Given the large number of jurisdictions that do not assign judges full-time to hear juvenile/family cases, it is not surprising that commissioners and/or referees often assume the judicial responsibilities in this area. Recently, this practice has become a source of increasing controversy.

At the level of standards development, the positions taken differ greatly. The National Advisory Commission, while not specifically addressing itself to the family court, stated only judges should perform judicial duties. This was based upon the belief that important functions would be performed by personnel without the skills and experience to discharge them fairly and efficiently.[9] Such a stance reflects much of the criticism leveled against commissioners/referees based on the assumption that inferior judicial personnel will perform in an inferior manner because they lack the scope of powers given a judge and/or the equivalent background and knowledge of a judge.

However, neither of the two groups directly involved in family matters have taken such a strong stand on the use of judicial personnel other than judges. The HEW approach is to allow referees, but only when they are first certified by a special merit board and then are selected by a judge. The National Council's position is that referees can be utilized when they are members of the State Bar, familiar with the court, given limited powers all of which must be confirmed by a judge, and can be by-passed when a party prefers to go before a judge.

There is little indication from either of the latter groups as to the basic rationales for their positions. In part, it may be due to the traditional use of referee/commissioners in this environment. Secondly, it may be an indication of the reality that few jurisdictions will do away with such positions in favor of more judges during a period of scarce resources. And finally, it is possible that the belief may exist that the continued use of referees would allow the family court to be more responsive to the needs of its clients and less rigid than the general court environment.

It appears at the state level that the use of referees for juvenile/family matters is an accepted practice. The available surveys do not cite any states that prohibit such an approach. The general standard appears based either on county population or a determination of the judge(s) as to the need for a referee. No data provides any evaluation, subjective or objective, upon which a qualitative standard is being or could be applied.

Although this issue is most often discussed in the context of the quality of justice, this may be somewhat premature. If states are committed to the use of referee/commissioners, the first step would appear to be whether every effort is being made to assure that they are competent, adequately prepared for their tasks, and being utilized to

the maximum extent possible. If, after such assurances are made, it is determined that referees do detract from the overall effectiveness of the family court, their removal from the system should be immediately addressed.

7. Task Force Standards and Rationale:

The Task Force addressed the issue of judicial officers other than judges in two standards. Standard 8.3 specifies:

> All judicial proceedings relating to juveniles, including but not limited to detention, shelter care, waiver, arraignment, adjudicatory and dispositional hearings should be heard only by a judge.

The commentary to this Standard indicates,

> It is recognized that the use of personnel such as referees, commissioners and masters may be helpful in assuming some of the workload of an overburdened judge. Nonetheless, it is the intention of this standard that decisions affecting the freedom of an individual child should be made only by judges.
>
> Hearing officers below the role of judge symbolize the inferior status previously accorded the juvenile court... But juvenile law is growing in complexity and there is a developing appellate concern that only lawyer judges be empowered to constrain freedom. Along with these trends is a juvenile court movement to attain parity of status with general trial courts...

In Chapter 17: Judicial Officers and Nonjudicial Personnel, Standard 17.3 on Interim Use of Other Judicial Officers, states:

> Where commissioners and/or referees continue to be utilized to hear family court cases, they should meet the same qualifications as judges of the family court, be subject to the same standards of discipline and removal, training and education, demeanor and assignment.
>
> In such jurisdictions, plans for phasing out such personnel should be developed consistent with the maintenance of an adequate level of service in the family court.

The commentary indicates that this standard is intended to prevent any "upheaval" in the transition to having all matters heard by judges only. It further suggests that "if the first part of this standard is implemented, the phase-out could basically become a matter of gradually appointing commissioners to family court judgeships."

Footnotes:

[1]National Advisory Commission on Criminal Justice Standards and Goals, op. cit.

[2]National Council of Juvenile Court Judges, loc. cit.

[3]U.S. Department of Health, Education and Welfare, loc. cit.

[4]Source: Mark M. Levin and Rosemary Sarri, op. cit., p. 44.

[5]Source: U.S. Department of Justice, op. cit., p. 37.

[6]National Advisory Commission on Criminal Justice Standards and Goals, loc. cit.

[7]U.S. Department of Health, Education and Welfare, loc. cit.

[8]National Council of Juvenile Court Judges, loc. cit.

[9]National Advisory Commission on Criminal Justice Standards and Goals.

1. Issue Title: Support Staff--Should The Family Court have its own separate Administrative and Support Staff?

2. Description of the Issue:

If the family court is a separate division of the highest trial court of general jurisdiction, the consideration of administrative and support staff is an important issue. Either the family court's administrative and support staff is to be provided by the general trial court's non-judicial personnel or it should be provided with its own distinct staff under the family court's immediate supervision and direction.

3. Summary of the Major Positions:

While this issue is addressed by three groups devoted to developing standards, there is no uniformity of approach. One commentary states that the family court should provide a central organization for the administration of resources and promoting the development of support staffs experienced in handling family and related problems.[1] This infers the existence of a separate administrative and support staff. Another standard proposes adequate staffing at all levels with all administrative duties being handled by a court adminstrative officer who reports to the family court judge and/or his agency hierarchy.[2] The last standards organization promotes an integrated state-wide administrative structure for all courts except in large urban areas.[3] There, support personnel are to be provided either on a divisional basis under general department heads or through an administrative officer who would be responsible to the family court judge, as would all other departmental heads regarding administrative matters.

Unfortunately, there are no surveys available on state practices in this area. Although one analysis shows 22 states have courts of limited and special jurisdiction hearing only juvenile cases,[4] the data is not broken down in any further detail. It is known, however, that some courts in California, Colorado and New York do provide some specialized administrative staff for juvenile/family courts.

The reason for this lack of data is reflected in the responses elicited by a recent questionnaire distributed to all juvenile court judges by the National Council of Juvenile Court Judges. When asked to rank 14 problems according to which 3 were the most pressing, those responding ranked "need court adminstrator" as the least pressing of the available choices.[5] So, while this area may represent a policy issue to standards groups, it has yet to surface as an area of major concern at the state level.

4. Summary of State Practices:

Not available at this time.

5. Summary of Positions Recommended by Standards Groups:

NAC (1973)[6]	HEW/NCCD/NCJCJ Standards for Juvenile and Family Courts (1968)[7]	NCJCJ Evaluation Standards (1974)[8]
Commentary states that family court will provide central organization for administration of resources and promote development of support staffs experienced in handling family and related problems.	Recommends integrated court system with centralized state administrative unit. In large urban areas, allows either: 1) Divisional basis for personnel under supervision of general department heads; or 2) Administrative officer responsible to the family court judge as would all departmental heads in all administrative matters.	Recommends adequate services of physician, psychiatrist, psychologist, clerical staff, bailiffs, courtroom clerks. Administrative duties to be handled by a court administrative officer who reports to the judge and/or his agency hierarchy.

Summary of Positions:

I. No recommendation but promotes support staff with specialized experience - One group adopts this position.

II. Recommends statewide administrative unit except in large urban areas - One group adopts this position.

III. Recommends separate court administrative officer - One group adopts this position.

6. Analysis of the Issue:

Along with the concept of delineating a separate entity called the family court goes the question of how best to staff it with support personnel. The general approach of the groups involved in developing standards has been to propose a separate administrative staff for the family court in differing situations. While there is one position which espouses separate staffs for all family courts, another promotes a state-wide administrative structure except in large urban areas, while the last indicates the need for only a separable court administrator for the family court with adequate staffing at all other levels.

The general rationale for these positions appears to be the need for centralized supervision, coordination, and policy development, especially in larger urban areas. The theory is that given the many agencies involved in the family court in such an environment, these could best be utilized through a separate administrative and support staff structure. This approach would not be called for in smaller, more rural areas.

In opposition to the above is the concept of the family court as a division of the trial court of general jurisdiction. As a division of the trial court, it can be argued that the family court's support staff should be supervised under the structure set up for the total trial court and not separated from it. At most, perhaps a part of this overall staff should be responsible for divisions of the court while still acting under a centralized management approach.

This area has not attracted a great deal of attention as yet. Thus, there is no data available on state practices at this time or the rationales therefore. It appears that the major concern at this time is where family law matters should be dealt with and by what type of judicial personnel rather than what kind of administrative/support structure should be involved.

7. Task Force Standards and Rationale:

The Task Force focused on the issue of support staff in Standard 17.4.

> The family court division should be provided with adequate administrative support staff to meet all nonjudicial administrative needs of the division. Each jurisdiction should develop staffing standards to assure the provision of such support, written standards delineating the responsibilities of the division's administrative personnel, and clear lines of authority to maintain coordination with the administrative structure of the general trial court.

The commentary to this Standard makes the following observations.

> In many instances, a separate division of the general trial court warrants some type of separate and specialized administrative support staff. As juvenile/family law cases often involve a widely different group of laws, forms, and agencies, a sufficiently large caseload justifies a staff with specialized administrative experience in this area.
>
> This standard is intended to emphasize the need for providing the family division with adequate support personnel to carry out its responsibilities, while assuring that such staff are an integrated part of the overall administration of the general trial court structure.

In general, then, the Task Force proposed that the family court division be supplied with a separate staff where the caseload warrants, with this staff to be closely coordinated with that of the general trial court.

In Standard 17.5 the Task Force called for specialized educational training programs for those who serve on the family court staff.

Footnotes:

[1]National Advisory Commission on Criminal Justice Standards and Goals, op. cit., p. 294.

[2]National Council of Juvenile Court Judges, op. cit., Chapter VL.

[3]U.S. Department of Health, Education and Welfare, op. cit., p. 120.

[4]U.S. Department of Justice, loc. cit.

[5]Kenneth Cruce Smith, op. cit., p. 34

[6]National Advisory Commission on Criminal Justice Standards and Goals, loc. cit.

[7]U.S. Department of Health, Education and Welfare, loc. cit.

[8]National Council of Juvenile Court Judges, loc. cit.

1. Issue Title: Selection of Judges--Which Type of Selection Process should be utilized for Judges of the Family Court?

2. Description of the Issue:

The question of how judges of the family court should ascend to the bench involves really two basic areas: (1) The general issue of whether trial judges should be selected by an elective, appointive, or merit system; and (2) The specific issue of whether family court judges should be selected separately from general trial judges whatever the process utilized in a particular jurisdiction. This area is one of concern because if a separate division such as the family court is accepted as a unique entity within the general trial court structure, consideration should be given to the effect of this delineation upon all levels of personnel selection.

3. Summary of Major Positions:

Only two of the three standards organizations cited previously have dealt with the specific method which should be utilized in selecting family court judges. One group specifically endorses the merit selection plan for all judicial appointments.[1] The other body provides an alternative standard which allows for either the appointment or assignment of family court judges, but in a manner that separates the process from that which is utilized for all other trial court judges.[2]

The present practices of the states show heavy reliance upon the elective process, with some states electing judges specifically to the family (juvenile) court, while less than one-fifth of the states utilize an appointive system.[3] The current data available gives little indication of many instances in which family court judges are selected separately from the general trial bench.

4. Summary of State Practices:[4]

Method of Selection	Number of States	Names of States
I. Appointed by Governor.	9	CT, DE, HI, ME, NH, NJ, RI, SC, VT
II. Appointed by President.	1	DC
III. Appointed by Presiding Judge of Superior Court	1	AK
IV. Appointed by Public Welfare Commissioner.	1	UT
V. Elected.[5]	38	AL,[6] AZ, AR, CA, CO, FL, GA, ID, DE, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NB,[7] NV, NM, NY, NC, ND, OH, OK, OR, PA, SD, TN, TX, WA, WV, WI, WY

5. Summary of Positions Recommended by Standards Groups:

NAC (1973)[8]	HEW/NCCD/NCJCJ Standards for Juvenile Courts (1968)[9]
Recommends merit selection process whereby judicial nominating commission representatives from the judiciary, the general public, and the legal profession nominates a slate of qualified candidates to fill judicial vacancies and Governor then appoints from this list.	Recommends appointment or assignment: 1) If appointed by Governor, should be from list of names submitted by a panel of representatives from the law, social work, and related disciplines. 2) If assigned by Chief Justice from pool of available judges, advice of panel described above should be sought.

Summary of Positions:

I. Merit Plan of Judicial Selection - One group recommends utilization of the Merit Plan for all trial court judges.

II. Appointment or Assignment Based on Recommendations of Specialized Panel - One group recommends either appointment by Governor or assignment by Chief Justice based on recommendations of a panel that would be sought specifically for family court judges.

6. Analysis of the Issue:

The question of how judges should be selected has been of general concern in recent years, but has not been the focus of much attention in the debate over the family court.

Two positions are basic to this issue. One is that judges should be elected in keeping with the basic tenets of a democratic political structure. This position argues that the voters should retain the right to elect judges and to elect out of office judges who perform poorly or who do not maintain the dignity of the court either through their personal or professional actions. No standards-promulgating group has opted for this position. The other is the use of a representative nominating commission which submits a list of qualified candidates to the Governor, who then appoints from that list; i.e., the merit selection plan. Both standards bodies that have addressed the issue have adopted this approach. However, one group proposes a separate nominating commission for the family court although little in the way of a rationale is offered.

Merit selection is generally promoted on the basis that it will result in a better quality of judges than the elective process does. The question, of course, is how does one define quality? Likewise, the mere selection of a qualified person has no guarantee of how that person will function as a judge. Despite these contra points, merit selection is the most frequently espoused selection process today.

Any special adaptation of the merit selection plan to the family court would appear to revolve around the family court as a separate and distinct division concept discussed supra. It does not surface an area of particular concern by most authorities once the basic selection debate is resolved.

The state practices still lean heavily in favor of the election of judges, although many elections are held under a modified merit plan. Except in those states where recent judicial reforms have been initiated, the method of selection seems governed more by tradition than by anything else. And, as with other issues in this area, there is little quantifiable data to support whatever positions are discussed, especially as it relates to the family court.

7. Task Force Standards and Rationale:

The Task Force considered the issue of selection of judges in Standard 17.1.

> The selection of judges for the family court should be governed by the following procedures:

A. Where the selection entails an assignment to the family court as a matter of internal trial court policy, the assignment should be made by the presiding judge without regard to seniority or any other factors which may detract from the objective evaluation of an individual's competence to serve on the family court;

B. Where the selection entails filling a vacancy which can only be filled by the election or appointment of a new judge, the vacancy should be filled by the merit plan of judicial selection. The Judicial Nominating Commission should include representatives with experience in juvenile justice from the judiciary, the general public and the legal profession.

The Task Force felt that these procedures would likely enhance the quality of jurists selected for the family court bench. While not endorsing a separate Nominating Commission for family court judges selected via the merit plan, the Standard emphasizes the importance of adequately representing the relevant interests on the Commission. Moreover, the commentary specifies,

> ... the nominating commission should maintain a separate list of potential nominees possessing the requisite qualifications for service on the family court.

Footnotes:

[1]National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 7.1 (1973).

[2]U.S. Department of Health, Education and Welfare, Standards for Juvenile and Family Courts, p. 104 (1968).

[3]Mark M. Levin and Rosemary Sarri, Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States, p. 44 (1974).

[4]Ibid.

[5]Note that in some counties in some states, such as Denver, Colorado, judges are elected specifically to the juvenile court.

[6]Alabama really defies classification here. In some counties, juvenile court judges are appointed by the Governor, in some by the Legislatures, and in some by county commissioners.

[7]In Nebraska, the Governor appoints judges in those counties that have a separate juvenile court.

[8]National Advisory Commission on Criminal Justice Standards and Goals, loc. cit.

[9]U.S. Department of Health, Education and Welfare, loc. cit.

APPENDIX A

JUVENILE RECORDS AND INFORMATION SYSTEMS: AN OVERVIEW AND STATEMENT OF PRIMARY ISSUES

JUVENILE RECORDS AND INFORMATION SYSTEMS: AN OVERVIEW AND STATEMENT OF PRIMARY ISSUES

Virtually every state has enacted legislation to limit public access to juvenile court records and to declare that an adjudication of delinquency is not a conviction of crime. The basic principle underlying this legislation is based upon the premise that children are generally different than adults; that being a child means having less judgment, less maturity and less moral development than an adult. In recognition of these differences (and because of a sense of compassion for its children), society does not generally attach the same degree of blameworthiness to a child's transgressions that it attaches to similar coduct by an adult. Therefore, society is more inclined to try to understand why a child acted wrongfully than to punish and is more inclined to try to correct a child because a child, being less developed, is thought to be more correctable. But, society's aspirations for its children are often not fully attained as numerous studies have shown that changing the label from "criminal" to "delinquent" and stating that juvenile records "shall not be open to the public" have not been sufficient to substantially reduce stigma or to ensure that opportunities will not be lost.

Because a primary goal of the juvenile courts has been to reduce stigma and because this goal has not been achieved, a number of legislatures and courts have mandated procedures to make the goal of reducing stigma more attainable. Typically, these procedures have involved either the sealing or expungement of records or providing mechanisms for correcting records or both. But, more than sealing or correcting records can be done to further ensure a reduction of stigma while preserving society's equally important goals of identifying children who act antisocially and limiting the likelihood that they will repeat.

In the remainder of this paper, I shall outline the primary areas of concern with respect to juvenile records and information systems. The areas I have selected are deemed important because the Task Force has indicated that it, like other groups that have recently examined the juvenile courts, believes that reducing stigma is a worthy goal.

1. Security and Privacy Council

I would recommend that the Task Force include a standard which would call for the creation of a Children's Privacy Committee which would either be a part of or similar to the Security and Privacy Councils that have been recommended by Project Search and the National Advisory Commission for adult records. The reasons for creating

such a committee would be to institutionalize a concern for children's records, to provide a mechanism for promoting consistency in record-keeping practices and to ensure visibility to record-keeping decisions. The main arguments against creating such a committee would be that the courts may be reluctant to tolerate any outside control over court records and a general reluctance to establish and fund a new bureaucracy.

The primary issues that must be addressed, once it is determined that a Children's Privacy Committee should be established, relate to the structure and power of the committee (who appoints members, should the committee be independent or part of the courts, what powers should the committee have, etc.?).

2. Standards for the Collection of Information

At the present time, there are no states that have promulgated standards for the collection of information about children and, to the best of my knowledge, there are no juvenile courts that have established even informal guidelines for the collection of information. If it is a goal of the juvenile justice system to protect against unnecessary stigma, it would seem logical to have standards which would ensure that unnecessary and potentially harmful information is not collected in the first place. Such standards would seem to be not only logical but also necessary in light of findings that juvenile records are often inadequate and incomplete and often contain vast amounts of information which are seldom if ever used. See Lemert, Records in the Juvenile Court at p. 355 (1969).

Standards pertaining to the collection of information could require that information be relevant to defined purposes, could require a periodic audit of the uses of information and could require that certain kinds of information not be collected once it is determined that the information is not useful for the purpose of making a valid decision. A general standard calling for a consideration of the effects of attempting to make a decision with too much as well as too little information might also be appropriate.

The primary arguments against promulgating standards governing the collection of information are twofold. First, an analysis of information use is expensive and complicated, perhaps beyond the competence of juvenile courts. Second, if there are standards for the collection of information, the implication is that information collectors (generally staff) can screen out information that the decision-maker (usually a judge) might have thought to be critical.

3. Harmful Information

It is becoming a regular practice for juvenile courts to turn over all of their records to a juvenile's attorney. This trend seems desirable, consistent with the adversary model and consistent

with a general trend towards full disclosure of information collected by a government agency with respect to an individual. While I would suggest that this general trend should be incorporated into a standard, I would also suggest that the standard specifically address the difficult issue of what to do with harmful information. By harmful information, I mean information which, if disclosed, could be harmful to the child. Such information generally falls into one or two categories: Information, provided by a third person, which, if disclosed to the child, could be harmful to the child (e.g., mother was a prostitute and the child is a product of her vocation); or, information, provided by the child, which, if disclosed to the parent could be harmful to the child (e.g., child had an abortion or VD).

A standard dealing with the problem of harmful information is difficult to draft because the problem is difficult. The alternatives could include: non-disclosure; non-use of the information; disclosure only to a professional intermediary; or a requirement that professional services be provided to the child to help him cope with the harmful information.

4. Sealing, Expungement and Destruction

What to do with records after they are created is a problem. After a certain period of time, records become old and useless. After a shorter period of time, records become stale and, because they are stale, they can be misleading. In any case, records can be used to deny children opportunities, educational and employment opportunities being the most noteworthy.

Two problems, related to the issue of what should be done with the records, are who can use record information (and for what purposes) and can (or should) a child be able to deny the existence of a record once it is sealed (or whatever).

As of 1972, sixteen states had laws providing for the destruction of records and nine states had provisions for sealing records. In most instances, sealing or destruction is discretionary with the court and that discretion is only exercised upon the filing of a petition. In other instances, destruction or sealing is automatic. In addition, recent court decisions indicate that under some circumstances (certainly when there is an illegal arrest), the records must be destroyed.

As of 1972, nine states had laws which provide that once a record is sealed, the proceeding is "deemed never to have occurred." The intent of these provisions is to permit children to deny the existence of a record. In other states, employers are forbidden from inquiring with respect to a sealed juvenile record.

The arguments for sealing and destruction are based upon the

principle of reducing the risk of stigma. The primary arguments against destruction in particular are that destruction deprives a child of proving at a later time what he did (or didn't do), destruction deprives researches of valuable information and destruction is an inadequate (perhaps dishonest) way of achieving the more direct goal of getting people not to discriminate because of a child's past juvenile record. The argument against permitting a child to deny the existence of a record is based upon the premise that society should never sanction a lie.

5. Computers

The use of computers by government agencies has been the subject of special scrutiny and concern. See, Federal Data Banks, Computers and the Bill of Rights (HEW 1971); Privacy Act of 1974; Project Search; NAC, etc. The primary reason for concern about the use of computers is that computers challenge the traditional constraints of manual systems by tremendously enlarging the capacity to store information, facilitating access and dissemination of information and creating a class of technical processors who are often remote from both the users and suppliers of information. On the other hand, the use of computers may also produce certain benefits by compelling managers to focus on the cost of information collection and retention, enhancing the capacity for research, evaluation and efficient management, and providing an opportunity to develop hardware and software systems to secure data from improper disclosure that would not be possible in a manual system. Nevertheless, error, malfunction, improper disclosure and privacy are problems that become magnified by the use of computers. Therefore, special constraints are probably warranted. The precise structure of those constraints should be the subject of a specific standard.

Task Force Standards and Rationale:

The Task Force addressed the issues raised in this memorandum in the five standards in Chapter 28 on Security, Privacy and Confidentiality of Information Pertaining to Juveniles.

Standard 28.1: Each state should enact laws governing the collection and retention of information pertaining to juveniles. Rules and regulations should be promulgated to provide for reasonable safeguards to protect against the misuse, misinterpretation and improper dissemination of the information and for periodic evaluations of information collection and retention practices within the state to determine whether information is being collected, retained and utilized properly.

Standard 28.2: Juvenile records should not be public records. Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to children or an interference with the purposes of official intervention.

Standard 28.3: Each state should establish by statute at least one Children's Privacy Committee. In some states the geography or diversity of concentrations of population in several distinct locations may make it necessary for this Children's Privacy Committee to include regional committees or subcommittees. In those states that have established a Security and Privacy Council with respect to adult information systems, a Children's Privacy Committee could be established as a subcommittee of the council. The members of the committee should include persons who have knowledge and expertise in child advocacy, delivery of services to children, information systems and juvenile justice activities affecting children.

The purpose of the Children's Privacy Committee is to institutionalize a concern for juveniles' records, to provide a mechanism for promoting consistency in record-keeping practices and to insure visibility in record-keeping decisions. It should have the authority to examine, evaluate and make recommendations concerning privacy, juvenile records, and information practices and policies pertaining to children and should have within its power the enforcement civil remedies, and administrative, civil and criminal sanctions for the improper collection, retention, dissemination or use of juvenile records.

Standard 28.4: Any computerized system used by a juvenile justice system to store information pertaining to juveniles should be designed to assure compliance with Standard 28.1 - Collection and Retention of Information Pertaining to Juveniles, Standard 28.2 - Access to Juvenile Records and Standard 28.5 - Sealing of Juvenile Records. The data included in the computerized system should be objective and factual and should not include data of a subjective, predictive or diagnostic nature.

A computerized system should only be adopted if the ability of the juvenile justice system to deliver services to children and families will be substantially enhanced by automation and the economic and privacy costs of automation are less that the benefits to be obtained by automation.

Standard 28.5: Each state should enact legislation providing for the prompt sealing of juvenile records when, due to dismissal of a petition prior to or as a result of adjudication, the rehabilitation of the juvenile, or the passage of time, the adverse consequences that may result from disclosure of such records outweigh the necessity or usefulness of retaining them.

Included within the legislation relating to the sealing of juvenile records should be precise procedures for notification of all persons, agencies or departments which may have copies of the juvenile's record or notations regarding that record in their files, that the juvenile record has been sealed by the family court and to destroy or delete any such copies or notations.

Whenever a juvenile's record is ordered sealed, the family court proceedings should be deemed never to have occurred and the juvenile who is the subject of the record may inform any person or organization that, with respect to the matter in which the record was sealed, he was not arrested and never appeared before a family court.

Once a juvenile record is sealed the only person who should have access to that record is the individual who is the subject of the record or an authorized representative acting in that individual's behalf.

The commentary to each of these standards sets forth a detailed analysis in support of the position embodied therein.

In general, the Task Force shared the increasing--indeed, now widespread--concern about the potential abuses of governmental collection and retention of information on private citizens. It viewed these problems as particularly acute in the juvenile justice system, since the rehabilitative philosophy underlying this system can be significantly compromised or thwarted entirely by the misuse of juvenile records.

The overall objectives of the standards, then, are similar to recommended functions of the Children's Privacy Committee proposed in Standard 28.3. The standards are designed to encourage the establishment of mechanisms to institutionalize a concern for (1) maintaining privacy in juvenile records; (2) promoting consistency in record-keeping practices; and (3) insuring visibility in record-keeping decisions.

APPENDIX B

COMPLETE LISTING OF COMPARATIVE ANALYSES

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